UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLIFFORD PAUL WILTSIE, Appellant, vs. CALIFORNIA DEPARTMENT OF CORRECTIONS, et al., Appellees.	)	NO. 22380

APPELLEES' BRIEF

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JURISDICTION

The order of the United States District Court for the Northern District of California, dismissing appellant's complaint, in the proceeding entitled Wiltsie v. California Department of Corrections, et al., No. 46637, was issued July 31, 1967. Appellant, a prisoner in the California State Prison at San Quentin, alleged that his claim arose under Title 42, United States Code sections 1983 and 1985 (the Civil Rights Act), and sought the jurisdiction of the district court under Title 28, United States Code sections 1331 and 1343. The jurisdiction of this Court is invoked under Title 28, United States Code sections 1291 and 1915.

STATEMENT OF THE CASE AND OF THE FACTS

On March 3, 1967, appellant filed a civil complaint in the district court. The defendants were California Department of Corrections, Walter Dunbar (Director of the Department of Corrections), Lawrence E. Wilson (Warden of the State Prison), R. Wham (Associate Warden of the State Prison), C. B. McEndree (a Correctional Captain), C. E. Moody (a Correctional Lieutenant), Does One and Two (Correctional Sergeants), N. T. Smith (a Correctional Officer), Woodside (a Correctional Officer), and Does Three through Twenty-five (Correctional Officers). The complaint alleged that at noon on January 18, 1967, racial outbursts occurred within the prison, and that until about 7:30 p.m. appellant and other inmates were restricted to the waterfront area where they had been employed. On the next day, about 1:00 p.m., appellee McEndree announced over the prison public address system that appellee Moody would conduct a general search of all cells for weapons and contraband, and that inmates were expected to cooperate to insure an orderly and expedient search. Appellant was in his cell at 4:20 p.m. when he "yelled" to appellee Smith to turn on the lights. According to appellant, Smith replied, "You are not giving any orders, we are giving orders here."

Sometime between 6:00 and 8:00 p.m., Moody's search squad arrived at appellant's cell. The squad consisted of Moody, Does One through Twenty-Five and ten armed correctional officers. Appellant was ordered to undress, to leave his cell and to stand outside facing the gun walk, with his hands on a rail. At this point, according to appellant's complaint, Smith directed an obscenity at appellant and began beating him on "both sides of the head." Then Does Three and Four hit appellant with billyclubs on the shoulder and buttocks. Many officers joined in the beating including appellee Woodside and Doe Five. The alleged beating lasted "a matter of minutes" until Doe One ordered the officers to stop. Appellant was returned to his cell, only to be punched in the stomach by Doe Six. Doe Six then took an oil painting from appellant's cell. Appellant values the painting at $250.00.

On the next day, January 20, 1967, appellant says he displayed his bruises to "a member of the staff" and asked "M. T. A. Rogers" for medical attention. "M. T. A. Rogers" directed appellant to see the sergeant. On January 21, 1967, he asked an inmate hospital worker about a physician but was told that he could not see a physician until the prison was "back to its regular routine." On January 23 appellant saw a physician and then returned to his work assignment "whereat he has

reported daily thereafter."

In count one for the alleged beating administered, appellant seeks actual damages from each appellee in the amount of $100,000; punitive damages from each appellee in the amount of $150,000; and costs. This represents a total of $8,250,000. In count two for the alleged conspiracy to deny him his rights, appellant demands $100,000 from each defendant or $3,300,000. In count three for the alleged theft of the oil painting, appellant asks $5,000 in damages. In count four for alleged pain and suffering, appellant demands $50,000. In count five for alleged assault, appellant seeks $50,000 from each appellee or $1,650,000. His total claim for damages is $13,255,000.

On or about April 14, 1967, appellant on his own motion filed an amended complaint. He identified Doe One as T. Plant (a Correctional Sergeant), Doe Two as J. Cry (a Correctional Sergeant), Doe Three as K. J. Slee (a Correctional Officer), Doe Four as M. R. Stauts (a Correctional Officer), Doe Five as R. L. Brown (a (Correctional Officer) and Doe Six as R. O. Fehrenkamp (a Correctional Officer).

On April 28, 1967, appellees filed a notice of motion and motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure and Title 28, United States Code section 1915(d). On May 26, 1967, appellant

filed an opposition to the motion and on June 9, 1967, he filed an "affidavit" challenging the determination of the Marin County District Attorney's Office that the charges were unfounded. On July 31, 1967, the district court dismissed the complaint.

APPELLANT'S CONTENTION

The district court erred in granting appellees' motion to dismiss when appellant's complaint clearly set forth a violation of the Civil Rights Act.

SUMMARY OF APPELLEES' ARGUMENT

The district court had broad discretion to dismiss appellant's complaint and did not abuse its discretion. The district court, following the general rule, was without authority to interfere in the internal affairs of the prison, especially where the purpose of the complaint was to harass and intimidate those persons charged by state law with the administration of the prison and the maintenance of discipline. An alleged assault by a prison official, in and of itself, does not state a cause of action under the Civil Rights Act. Moreover, the complaint on its face was frivolous and malicious.

ARGUMENT

THE COMPLAINT IN THE DISTRICT COURT DID NOT STATE A CAUSE OF ACTION AND WAS FRIVOLOUS AND MALICIOUS

The gravamen of appellant's complaint is that he was assaulted by prison officers during a search of his cell which followed a prison uprising, and that during the course of this assault his oil painting was removed from his cell. The district court, accepting all of appellant's allegations as true, dismissed the complaint on the ground that relief was not warranted under the Civil Rights Act. This decision was manifestly correct.

1. The District Court had Broad Discretion to Dismiss the Complaint and Did Not Abuse That Discretion.

The district court's discretion to deny a state prisoner the privilege of prosecuting a civil rights complaint is especially broad in an action against the agency which administers the state prisons, its director, and the warden and other officials of the institution in which the prisoner is incarcerated. Ford v. Wilson, 365 F.2d 831 (9th Cir. 1966); Shobe v. People, 362 F.2d 545, 546 (9th Cir. 1966); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965). The reasons for such broad discretion are that it would be disruptive of prison discipline to permit such civil suits to proceed while the plaintiff is still in custody, and that the maintenance

of such suits in federal courts would produce unseemly conflict between federal courts and state authorities. Weller v. Dickson, 314 F.2d 598, 601 (9th Cir. 1963); Shobe v. People, supra, 362 F.2d 545, 546 (9th Cir. 1966).

The general rule is that the federal courts have no power to control or regulate the internal discipline of state prisons. Hatfield v. Bailleaux, 290 F.2d 632, 640 (9th Cir. 1961). In the instant case appellant directs his attack not only at the warden of the state prison and some thirty of his men, but also at the California Department of Corrections and its director. In Roberts v. Barbosa, 227 F. Supp. 20, 21 (S.D. Cal. 1964), the court stated:

> "[P]ersons convicted of crimes and in the custody of their jailers do not look upon the case of Monroe v. Pape (1961) 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492, and numerous other cases decided by the Supreme Court concerning civil rights, as a pronouncement of principles for the redress of genuine grievances or wrongs, but rather as a blackjack to be used indiscriminately, maliciously, and at will to harass and annoy not only their jailers, but Judges, Jurors, witnesses and everyone having anything to do with their conviction."

In Civil Rights Act suits against public officials, the district court has an obligation toward the defendants to protect them from malicious and vindictive suits which are without substantial merit and which are designed to harass. Weller v. Dickson, supra, 314 F.2d 598, 601-604 (9th Cir. 1963) (Duniway, J., concurring);

Fletcher v. Young, 222 F.2d 222, 224 (4th Cir. 1955), cert. denied 350 U.S. 916 (1955); Allison v. Wilson, 277 F.Supp. 271, 274 (N.D. Cal. 1967). General and unsupported allegations against such officials have consistently been rejected as insufficient. Agnew v. City of Compton, 239 F.2d 226, 233 (9th Cir. 1956). Appellant's allegations were not sufficient to require the district court to interfere in the internal administration of California prison affairs.

2. No Federal Constitutional Right was Violated by the Alleged Assault and Theft.

The instant case parallels the case of Cullum v. California Department of Corrections, 267 F.Supp. 524 (N.D.Cal. 1967). There, as here, the prisoner claimed to have been assaulted by a prison guard. The court found that an assault by physical force on a single occasion, even if established as fact, did not state a claim upon which relief could be granted:

> "Status of the plaintiff is relevant for at least two reasons: First, a prisoner, unlike a private citizen, is maintained in custody for long periods of time. It is a fact of prison life that this confinement causes great tension, and that there are occasions which require the administration of summary discipline as a means for maintaining order. See Talley v. Stephens, 247 F.Supp. 683, 686 (E.D. Ark. 1965). On the other hand, the private citizen, even as a suspect, is generally not confined to a penal institution, and the same considerations which justify discipline in prison are not applicable to him.

"A second consideration which distinguishes the prisoner's action from one brought by a private citizen is that in the case of the former the Court, by allowing it to proceed to trial, would of necessity involve itself in the administration of discipline in prisons. This involvement is contrary to the declared policy of the Federal Courts which recognizes that the internal matters in state penitentiaries are the sole concern of the state except under exceptional circumstances. United States ex rel. Lee v. People of the State of Illinois, 343 F.2d 120 (7th Cir. 1965). Therefore, an additional consequence in permitting a prisoner to bring this action based on an assault is to inject the Federal Courts into prison administration by virtue of its role as the referee in prison-guard disputes.

"The consequences of such intervention are dangerous. For example, if every time a guard were called upon to maintain order he had to consider his possible tort liabilities, it might unduly limit his actions. Such limitation may jeopardize his safety as well as the safety of other prisoners. For this reason it is imperative that prison officials be given the discretion to apply discipline without the possible debilitating effect that would result if there were judicial review of each and every application of discipline to see who was right and who was wrong. As a general rule, prison authorities are given wide discretion as to the treatment of prisoners. Snow v. Gladden, 338 F.2d 999 (9th Cir. 1964). There is no reason for not extending this discretion to the area of summary discipline in which physical force is used."

The instant case has another factor which makes this an even stronger case for dismissal of the complaint than Cullum. The alleged occurrences here transpired at a time when the state prison was in turmoil and tensions

were running very high. There had been a prison strike and racial incidents and there was a responsibility to maintain administrative control and to assure the safety of those not involved, such as appellant who alleges he refused "to become a part of 'mob' action." The district court properly found that "[t]hese facts certainly justified the type of search involved herein and further, the use of necessary force to maintain order and discipline."

If the assault and theft did in fact occur, they might possibly violate some state law, but they did not infringe upon a federal constitutional right. In Cole v. Smith, 344 F.2d 721, 724 (8th Cir. 1965), a similar case, the court said:

> "[I]t appears that the claim appellant asserts in his complaint is purely private action, not involving constitutionally protected rights; not actionable and enforceable in the federal courts merely because one party happens to be a state employee or official. State officials can only be held accountable under the Civil Rights Act, supra, in the federal courts for conduct and actions taken pursuant to their official duties and where a clear showing is made of a violation of some federal constitutional right. Some of the authorities previously considered hold that an assault by a law enforcement officer, in and of itself, does not raise an action under the Civil Rights Act, and specifically, that alleged assaults by state prison officials, without any showing of a constitutional violation are matters for consideration of internal prison discipline of interest solely to the state and actionable, if at all, in the state courts."

See also United States, ex rel. Atterbury v. Ragen, 237 F.2d 953, 954-955 (7th Cir. 1956); Roberts v. Barbosa, supra, 227 F.Supp. 20, 23 (S.D. Cal. 1964).

3. The Allegations of the Complaint are Frivolous and Malicious

Appellant's complaint for $13,255,000 was frivolous and malicious. It was an attempt to harass the appellees and to interfere with prison administration. As stated in Weller v. Dickson, 314 F.2d 598, 602 (9th Cir. 1963) (Duniway, J., concurring):

> "We know from sad experience . . . that imprisoned felons are seldom, if ever, deterred by the penalties of perjury. They do not hesitate to allege whatever they think is required in order to get themselves even the temporary relief of a proceeding in court. The prospect of amercing their jailers in damages must be a most tempting one, even if it will not get them their freedom. The disruption of prison discipline that the maintenance of such suits, at government expense, can bring about, is not difficult to imagine. Particularly since Monroe v. Pape, 1961, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492, it has become apparent that the 'jailhouse lawyers' think that they have a new bonanza in the Civil Rights Act."

The complaint unfolded the story of the alleged beating with obvious caution. Nowhere were any actual injuries alleged. Appellant merely stated that he had surgery a year before and apparently the district court was expected to draw an inference that his ears were somehow damaged from the alleged beating. Appellant

asserted in the complaint that he saw a physician about four days after the claimed beating. Again, he did not allege any injuries or even that the doctor observed such. In fact, he alleged that he returned to his work assignment that very day and reported daily thereafter.

The alleged theft of the oil painting deserves little comment. We know of no federal constitutional provision which prevents prison authorities from removing personal property from the cell of an inmate.

It is the duty of the district court to be alert to the protection of indigents in their lawful rights, but this does not mean that the court must be open to such obviously frivolous and malicious claims as presented here. Spears v. United States, 266 F.Supp. 22, 26 (S.D.W.Va. 1967); Urbano v. Sondern, 41 F.R.D. 355, 358 (Conn. 1966), affirmed, 370 F.2d 13, 14 (1966).

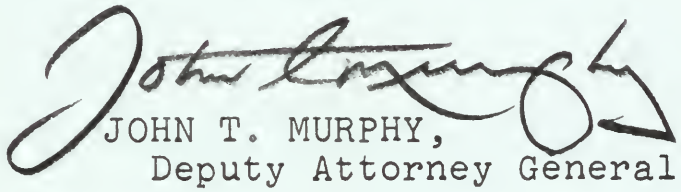
CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the district court dismissing the complaint be affirmed.

DATED: March 25, 1968.

THOMAS C. LYNCH, Attorney General
of California,

DERALD E. GRANBERG,
Deputy Attorney General,



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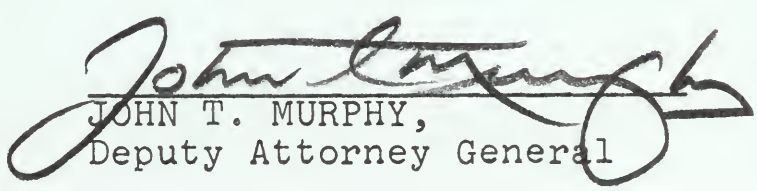
CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

Dated: March 25, 1968.



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